No. 04-563

IN THE

Supreme Court of the United States

DENEICE A. MAYLE, WARDEN,
Petitioner,

v.

JACOBY LEE FELIX,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE* HABEAS LAW SCHOLARS ALBERT ALSCHULER, JOHN H. BLUME, ERWIN CHEMERINSKY, ERIC M. FREEDMAN, RANDY HERTZ, JAMES S. LIEBMAN, AND IRA P. ROBBINS IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

When a prisoner challenging a state court criminal judgment amends his pending, timely-filed application to a federal district court for a writ of habeas corpus to include a new claim attacking the same judgment as the pending, timely-filed application, does the amendment relate back to the date of the filing of his application and thus satisfy the applicable statute of limitation?

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142 Cong. Rec. H2184 (daily ed. Mar. 13, 1996) 22
142 Cong. Rec. H2259 (daily ed. Mar. 14, 1996) 22
142 Cong. Rec. S3369 (daily ed. Apr. 16, 1996) 14
142 Cong Rec. H3609 (daily ed. Apr. 19, 1996) 14

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Black's Law Dictionary (3d ed. 1933) 6, 8
Hertz, Randy & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* (4th ed. 2001 & Supp. 2004) 10, 19, 21, 24, 27
United States Department of Justice, Bureau of Justice Statistics, *Federal Habeas Corpus Review: Challenging State Court Criminal Convictions* (1995) 14, 27
Wright, Charles Alan, et al., *Federal Practice and Procedure* (3d ed. 2004) 19
Wright, Charles Alan, *Procedure for Habeas Corpus*, 77 F.R.D. 237 (1978) 12
Yackle, Larry W., *Federal Courts: Habeas Corpus* (2003) 16

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INTEREST OF *AMICI*[1]

Amici are professors of law with a particular interest in the rules governing federal courts' resolution of state prisoners' applications for writs of habeas corpus.

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[1] Pursuant to Rule 37.6, *amici curiae* certify that no counsel for a party authored this brief in whole or in part, and that no person or entity, other than *amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief are on file with the Clerk.

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SUMMARY OF ARGUMENT

The Federal Rules of Civil Procedure apply to habeas proceedings unless a habeas-specific statute or rule provides an alternate procedure. *See, e.g.*, Rules Governing § 2254 Cases Rule 11 (Habeas Rules) ("The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provision or these rules, may be applied to a proceeding under these rules."). As applied to amendments of habeas corpus applications, this general rule has long been confirmed by 28 U.S.C. § 2242, which specifically provides that an "[a]pplication for a writ of habeas corpus may be . . . amended or supplemented as provided in the rules of procedure available to civil actions." Federal Rule of Civil Procedure 15 is the applicable rule of procedure "available to civil actions," and Rule 15(c) provides the rule governing whether an amendment relates back to the time the application was filed for purposes of the statute of limitations. Rule 15(c) mandates that an amendment to a habeas petition relates back to the date of the original application so long as "the

claim . . . asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Fed. R. Civ. P. 15(c)(2). Under the ordinary application of that standard, an amended habeas application attacking the same judgment of conviction or sentence as the original application relates back because the judgment imposing custody is the relevant "transaction" for habeas corpus purposes.

For three reasons, ordinary application of Rule 15(c) would in no respect interfere with the operation of the statute of limitations on habeas applications such that it is "inconsistent" with any federal statutory provision or Habeas Rules. First, this case is governed not by the generalized language of Habeas Rule 11, but by § 2242's specific statutory directive that "the rules of procedure available to civil actions" apply to the amendment of habeas petitions. Only a direct conflict with another statute could create a sufficient "inconsistency" to overcome this statutory command, and there is no such conflict. Second, the straightforward application of Rule 15(c) to habeas actions is not inconsistent with the habeas framework generally or with the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, in particular. AEDPA does not promote the finality of criminal convictions to the exclusion of any other objective. Rather, Congress's purpose in enacting AEDPA was to streamline habeas litigation in a way that is both consistent with, and facilitated by, application of Rule 15(c)'s relation-back rules. Finally, Rule 15(c)'s relation-back analysis is desirable because it preserves meritorious claims for review without undermining the capacity of other civil and habeas rules to guard against potential abuse of the Great Writ.

ARGUMENT

I. AN AMENDED HABEAS APPLICATION ATTACKING THE SAME JUDGMENT OF CONVICTION OR SENTENCE AS THE ORIGINAL APPLICATION RELATES BACK UNDER FEDERAL RULE OF CIVIL PROCEDURE 15(C) BECAUSE THE JUDGMENT IS THE RELEVANT "TRANSACTION"

The resolution of this case turns on whether the relation-back principles established in Federal Rule of Civil Procedure 15(c) apply in the habeas corpus context as they do in any other civil case. *See, e.g., Browder* v. *Director, Dep't of Corrections of Ill.*, 434 U.S. 257, 269 (1978) ("It is well settled that habeas corpus is a civil proceeding.") (citations omitted). To illustrate the consistency between Rule 15(c) and the statutes and rules governing habeas proceedings, it is first necessary to describe the operation of Rule 15(c) and its application to this case.

A. Plain Language Of Rule 15

Rule 15(c) governs how amendments shall be treated for statute of limitations purposes. It provides: "An amendment of a pleading relates back to the date of the original pleading when . . . the claim . . . asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Fed. R. Civ. P. 15(c)(2). Rule 15(c) is phrased in the disjunctive. An amended pleading relates back when the claim asserted in the amended pleading arises out of the same "conduct" or "transaction" or "occurrence" as the original pleading. Thus, an amended pleading asserting claims arising out of the same transaction or occurrence or conduct as the original pleading therefore relates back for statute of limitations purposes, even if the other constituent terms of 15(c) are not satisfied. *See USX Corp.* v. *Barnhart*, 395 F.3d 161, 167 (3d Cir. 2004); *FDIC* v. *Bennett*, 898 F.2d 477, 479 (5th Cir. 1990); *FDIC* v. *Grant*, 8 F. Supp. 2d 1275, 1290 (N.D. Okla. 1998).

At the time Rule 15(c) was promulgated in 1938, the term "transaction" was defined broadly to include, for example, an extended series of events involving multiple ac-

tors: "[P]roperly embrac[ing] that combination of acts and events, whether in nature of contract or tort, out of which a legal right springs, or upon which a legal obligation is predicated[,] [t]ransaction includes all the facts and circumstances out of which the injury arose, or the entire series of acts and conduct of the parties in the business or proceeding between them which forms the basis of their agreement." *Black's Law Dictionary* 1747 (3d ed. 1933) (citations omitted). As this Court has long recognized, "transaction" is "a word of flexible meaning . . . [that] may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship." *Moore* v. *New York Cotton Exch.*, 270 U.S. 593, 610 (1926).

B. Policies Underlying Rule 15(c)

Rule 15's focus on "conduct, transaction, or occurrence" balances the interests of ensuring notice to the answering party, while at the same time allowing meritorious claims to go forward. It is predicated on the concept that "a party who has been notified of litigation concerning a particular occurrence has been given all the notice that statutes of limitation were intended to provide." *Baldwin County Welcome Ctr.* v. *Brown*, 466 U.S. 147, 149 n.3 (1984).

This Court's analysis of relation-back issues has emphasized that the concept of notice is central to application of Rule 15(c). In *Tiller* v. *Atlantic Coast Line Railroad Co.*, 323 U.S. 574 (1945), the plaintiff alleged that her husband's death in a railroad accident was caused by a negligent failure to keep a lookout, to give proper warning, to keep the head car properly lighted, or to inform her husband of a change in the manner of shifting cars, in violation of the Federal Employers' Liability Act. The plaintiff subsequently amended her complaint to allege that her husband's death had been caused by different conduct (a negligent failure to light the rear locomotive), and in violation of a different legal authority (the Federal Boiler Inspection Act and related regulations). This Court held that the amended complaint related back, reasoning that both claims "related to the same general conduct, transaction and occurrence which involved the

death of the deceased." *Id.* at 581. "There was therefore no departure," the Court held, since "[t]he cause of action now, as it was in the beginning, is the same—it is a suit to recover damages for the alleged wrongful death of the deceased." *Id.* Accordingly, concluded the Court, "[t]here is no reason to apply a statute of limitations when, as here, the respondent has had notice from the beginning that petitioner was trying to enforce a claim against it because of the events leading up to the death of the deceased in the respondent's yard." *Id.*

Following *Tiller*, federal courts have held that amendments asserting additional claims—even if they involve new legal theories and significant variation in factual proof—relate back to the earlier pleading so long as they challenge the same core transaction or occurrence causing the injury for which the plaintiff's original complaint sought relief. *See, e.g.*, *Miller* v. *American Heavy Lift Shipping*, 231 F.3d 242, 248-249 (6th Cir. 2000) ("An amendment that alleges added events leading up to the same injury relates back.") (internal quotation marks omitted); *FDIC* v. *Knostman*, 966 F.2d 1133, 1139 (7th Cir. 1992) (holding that an amended complaint related back to the pending, original complaint where "the basis of plaintiffs' claims in both the original complaint and [amended] Count ... involved the [same] Contracts," such that the defendant "should have been prepared to defend the action against all claims which could have arisen pursuant to the two contracts"); *Grattan* v. *Burnett*, 710 F.2d 160, 163 (4th Cir. 1983) (holding that the added claim in the amended complaint at issue related back because "[b]oth [pleadings] concern the events leading up to the[] termination ... and in both the termination was the ultimate wrong of which they complained"), *aff'd*, 468 U.S. 42 (1984); *Buie* v. *Woolway*, No. 98-C-2254, 2000 WL 528645 (N.D. Ill. Mar. 27, 2000); *Zagurski* v. *American Tobacco Co.*, 44 F.R.D. 440, 443 (D. Conn. 1967). In such circumstances, the original pleading has placed the defendant on notice sufficient to warrant treating the amendment as if it were filed at the time of the original pleading.

C. Rule 15(c)'s Standard As Applied To Amended Habeas Applications

When applied in the habeas context as it is in other civil contexts, Rule 15(c) as interpreted in *Tiller* dictates that an amended application for a writ of habeas corpus relates back to a timely, pending application as long as the amendment attacks the same judgment of conviction or sentence as the original filing.

Under the plain text of Rule 15(c), the judgment that results in a prisoner's incarceration is the source of the injury he alleges and thus is the "transaction" to which any amendment must relate back. A "transaction" is the "combination of acts and events . . . upon which a legal obligation is predicated." *Black's Law Dictionary* 1747 (3d ed. 1933); *see also id.* ("Transaction includes all the facts and circumstances out of which the injury arose."). Here, the state court judgment imposing custody is the "legal obligation" and source of injury. The state court judgment encompasses, and is, the culmination of the "combination of acts and events"—the legal proceedings—that lead to it. Because the judgment imposing custody is "the ultimate wrong of which" the prisoner complains, *Grattan*, 710 F.2d at 163; *accord Ellzey* v. *United States*, 324 F.3d 521, 526 (7th Cir. 2003), any challenge to the validity of that same judgment of conviction or sentence relates to that "transaction."

This application to Respondent of Rule 15(c)'s relation-back principles in this case is consistent with the policy of the Rule to facilitate the resolution of claims on their merits, because it is crucial to Mr. Felix's capacity to vindicate his constitutional claim that the admission of his statement, allegedly obtained through coercion, violated his Fifth Amendment right against self-incrimination. This application also advances the Rule's "fair notice" policy, and as a result, fits comfortably within *Tiller* and later cases adopting its analytic approach. In granting relation back, the Court in *Tiller* emphasized that "[t]here is no reason to apply a statute of limitations when, as here, the respondent has had notice from the beginning that petitioner was trying to

enforce a claim against it because of the events leading up to the [ultimate injury]." 323 U.S. at 581; *accord, e.g., Knostman*, 966 F.2d at 1139 (relation back appropriate because the defendant "should have been prepared to defend the action against all claims which could have arisen pursuant to the two contracts"); *Grattan*, 710 F.2d at 163 ("Both [pleadings] concern the events leading up to their termination . . . and in both the termination was they complained."). The same is true of an amended habeas application that attacks the same judgment of conviction or sentence as the original, pending application. The State in such a case has been on notice, since the timely filing of the initial application, of the claim that the state court judgment that placed the prisoner in custody, and thus was the source of his alleged injury, is "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241; *see also Tiller*, 323 U.S. at 581.

In light of habeas-specific doctrines like the exhaustion of state remedies and procedural default rules, notice is further provided in habeas proceedings because claims presented in a federal habeas application have already been litigated against essentially the same adverse party at the state level. The exhaustion requirement mandates dismissal of habeas claims by prisoners that have not been "fairly present[ed] . . . to the state courts in order to give the State the opportunity to pass upon and correct the alleged violation of its prisoners' federal rights." *Duncan* v. *Henry*, 513 U.S. 364, 365-366 (1995).[2] Moreover, "a habeas petitioner who has

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[2] Specifically as codified by AEDPA, "[a]n application for a writ of habeas corpus on behalf of a person shall not be granted unless it appears that (A) the applicant has exhausted the remedies available in the courts of the State; or (B) there is an absence of available State corrective processes[,] or circumstances exist that render such process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1). Two narrow, non-statutory exceptions have also been recognized in cases in which (1) failure to exhaust is not discovered until after a full hearing or other proceedings and the district court concludes that dismissal would be wasteful of judicial resources; and (2) district courts conclude that dismissal would

failed to meet the State's procedural requirements for presenting his federal claims" is generally procedurally barred from raising the claim at the federal level. *Coleman* v. *Thompson*, 501 U.S. 722, 731 (1991). Thus—absent waiver of these protective doctrines by the State, which is of course entirely within the State's control—the State will usually have already actually litigated the claim at issue in any amended application. In such situations, the State has both actual and inquiry notice of the claim. *See, e.g., Specht* v. *Netscape Communications Corp.*, 306 F.3d 17, 30 (2d Cir. 2002) ("Inquiry notice is actual notice of circumstances sufficient to put a prudent man upon inquiry").

As Petitioner's amicus acknowledges, therefore, "[h]abeas procedure makes it highly likely that the state will also have actual notice of any specific claim that the petitioner may be able to raise in an amended petition." Criminal Justice Legal Foundation Br. 20. Indeed, in this case, the State has been on notice of the Respondent's challenge to admission of his involuntary statements since the initial trial in 1995.[3] In amended habeas applications, "[t]here is no

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"serve no interest state or federal, would burden the states with unnecessary litigation, or would constitute a hollow exercise in etiquette." *See* 1 Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* § 234b nn.31-32 and accompanying text (4th ed. 2001 & Supp. 2004) (internal quotation marks and citations omitted).

[3] *See People* v. *Felix*, No. 93-CF-F09225, *Notice of Motion, Motion for Order Suppressing Statements of Defendant, & Memorandum of Points and Authorities in Support of Motion to Suppress Statements of the Defendant*, CT 581, 583, 589 (May 26, 1995) (moving, with regard to "the videotaped recording of the interview in question," that "the Court[] suppress the entire statement by the Defendant"). Here, California did not receive the additional advance notice of the amendment that would be available in "most states" where a petitioner is required to "file[] a [state habeas] petition in a state court of first instance, typically in trial court" *Carey* v. *Saffold*, 536 U.S. 214, 219 (2002), before filing in federal court. The reason, however, is California's own idiosyncratic rule allowing prisoners to file an original habeas petition in the California Supreme Court to exhaust their claims. Because States control their own procedures, "California remains free, through legislative or judicial action, to adjust its

reason to apply a statute of limitations when, as here, the respondent has had notice from the beginning that petitioner was trying to enforce a claim against it because of the events leading up to" the transaction or occurrence causing Respondent's ultimate injury—the judgment resulting in his incarceration. *Tiller*, 323 U.S. at 581.

For the foregoing reasons, applying relation-back rules in the habeas context as in other civil cases requires that an amended habeas application attacking the same judgment of conviction or sentence as the original application relates back under Federal Rule of Civil Procedure 15(c) because the judgment imposing custody is the relevant "transaction."

II. APPLICATION OF FEDERAL RULE OF CIVIL PROCEDURE 15(C) TO HABEAS CASES IS SPECIFICALLY MANDATED BY 28 U.S.C. § 2242 AND IS NOT INCONSISTENT WITH ANY PROVISION OF FEDERAL LAW

Habeas Rule 11 and Federal Rule of Civil Procedure 81(a)(2) both reflect Congress's generalized instruction that civil procedure rules apply to habeas cases unless overridden by some habeas-specific statute or rule. *See* Habeas Rule 11 ("The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provision or these rules, may be applied to a proceeding under these rules."); Fed. R. Civ. P. 81(a)(2) ("These rules are applicable to proceedings for ... habeas corpus ... to the extent that the practice in such proceedings is not set forth in statutes of the United States [or] the Rules Governing Section 2254 Cases, ... and has heretofore conformed to the practice in civil actions."). In this case, the habeas statutes and rules provide no *contrary* procedure for the simple reason that one of those statutes, 28 U.S.C. § 2242, expressly provides that an "[a]pplication for a writ of habeas corpus may be ... amended or supplemented as provided in the rules of procedure available to civil actions." Indeed, application of the

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original writ system" to conform to the practice in virtually every other state. *Id.* at 225 (internal quotation marks omitted).

federal civil rules to motions to amend was the established practice of this and other federal courts in habeas cases even before § 2242 was enacted in the omnibus 1948 revision designed to conform the Judicial Code to existing practice. *See* 28 U.S.C. § 2242, Historical and Statutory Notes ("The third paragraph [subjecting habeas amendments to the civil rules of procedure] is new. It was added to conform to existing practice as approved by judicial decisions." (citing *Holiday* v. *Johnston*, 313 U.S. 342 (1941); *Dorsey* v. *Gill*, 148 F.2d 857, 865, 866 (D.C. Cir. 1945)).

Whatever may be the case, therefore, for civil rules of procedure not specifically addressed by the habeas statutes, the "rules of procedure available to civil actions" that describe how pleadings "may be ... amended" are explicitly incorporated into, and thus cannot be inconsistent with, the habeas statutes. On its face, § 2242 governs amendment issues in habeas, and it demonstrates that Congress intended Rule 15 to apply to habeas petitions. *See Withrow* v. *Williams*, 507 U.S. 680, 696 n.7 (1993) (noting in dicta that "Rule 15 applies in habeas actions"); Charles Alan Wright, *Procedure for Habeas Corpus*, 77 F.R.D. 237, 240 (1978) ("The Habeas Corpus Rules are silent on whether a petition may be amended. The statute, however, provides that a petition may be amended or supplemented as provided in the rules of procedure applicable to civil actions. Thus amendment of the petition will be allowed under the liberal standards of Civil Rule 15."); *see also Harris* v. *Nelson*, 394 U.S. 286, 298 (1969) (noting the "continuing applicability" of the Federal Rules of Civil Procedure to habeas procedural questions that had theretofore been resolved in accordance with pre-existing federal civil practice).

Nor is there any basis for concluding that the adoption of the Habeas Rules in 1977 was intended *sub silentio* to nullify § 2242. On the contrary, the original Advisory Committee Notes to the Habeas Rules expressly assumed that Rule 15 would continue to apply in habeas proceedings. *See* 1976 Advisory Committee Notes to Rule 15 ("[C]ivil rule 15(a) may be used to allow the petitioner to amend his petition

when the court feels this is called for by the contents of the answer"). The Habeas Rules themselves are silent on the issue of amendment, *see, e.g.*, *Newell* v. *Hanks*, 283 F.3d 827, 835 (7th Cir. 2002), just as one would expect where an existing statute—§ 2242—already occupies the field. *Cf. Woodford* v. *Garceau*, 538 U.S. 202, 208 (2003) ("Nothing in the Habeas Corpus Rules contradicts Rule 3. The logical conclusion, therefore, is that a habeas suit begins with the filing of an application for habeas corpus relief—the equivalent of a complaint in an ordinary civil case."); *Kiser* v. *Johnson*, 163 F.3d 326 (5th Cir. 1999) ("[W]here the Rules Governing Section 2254 Cases are silent on an issue, Rule 11 compels us to follow the Federal Rules of Civil Procedures.").

Nor does AEDPA purport to amend or repeal § 2242—save in one specific respect that does not apply to this non-capital case and proves that, when Congress meant to alter the operation of § 2242, it did so explicitly. AEDPA adopted a new chapter 154 of the Judicial Code, which was designed to address chronic delays in capital cases by providing states a series of additional procedural protections in habeas litigation in return for creating mechanisms to ensure the prompt appointment of state post-conviction counsel for capital prisoners. *See generally* 28 U.S.C. §§ 2261-2266; *Calderon* v. *Ashmus*, 523 U.S. 740, 742 (1998). For states that "opt in" by extending a right to counsel in state post-conviction proceedings, Congress cut the statute of limitations in half—to just 180 days, *see* 28 U.S.C. § 2263(a)—and explicitly provided that "[n]o amendment to an application for a writ of habeas ... shall be permitted after the filing of an answer to the application" unless such amendment meets the strict standards for a second or successive petition "specified in section 2244(b)." *Id.* § 2266(b)(3)(B).

This change is critically important for at least two reasons. First, even beyond the general presumption that Congress legislated against the background of existing statutes such as 28 U.S.C. § 2242, *see Cannon* v. *University of Chi.*, 441 U.S. 677, 696-697 (1979) ("It is always appropriate to assume that our elected representatives, like other citizens,

know the law."), § 2266(b)(3)(B) affirmatively demonstrates that Congress considered the specific relationship between the statutory time limits that it imposed in AEDPA and existing habeas amendment procedures. Chapter 154 embodies Congress's judgment that amendment rules should be tightened in capital cases, but, significantly, only where prisoners have been provided special additional protections to ensure that all of their constitutional claims are identified early in the post-conviction process. This judgment is particularly salient given Congress's focus on the death penalty in the AEDPA debates, *see, e.g.*, 142 Cong. Rec. S3369 (daily ed. Apr. 16, 1996) (statement of Sen. Inhofe); *id.* at H3609 (daily ed. Apr. 19, 1996) (statement of Rep. Buyer), and given the empirical evidence that delays in resolution in habeas proceedings are principally a concern in capital cases, *see, e.g.*, U.S. Department of Justice, Bureau of Justice Statistics, *Federal Habeas Corpus Review: Challenging State Court Criminal Convictions* 25 (1995) (noting that for habeas applications raising three or more issues, the mean processing time was 925 days for applications raising three or more issues, versus 344 days for a person sentenced to a term of years).

Second, the specific change that Congress made in Chapter 154—by mandating that post-answer amendments in opt-in capital cases be treated as successive or second petitions under 28 U.S.C. § 2244(b)[4]—confirms that Congress

[4] Section 2244(b) replaced various doctrines developed by this Court to restrict the filing of repetitive successive petitions with an even stricter set of procedural and substantive limitations. Thus, petitioners cannot bring claims not raised in their prior applications unless those claims (A) involve a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court, or (B) involve facts that could not have been discovered earlier through the exercise of due diligence *and* that would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the applicant guilty but for the constitutional error. 28 U.S.C. § 2244(b)(2). They must also seek leave to file from a court of appeals, and those determinations are not subject to rehearings or to Supreme Court certiorari review. *Id.* § 2244(b)(3).

did not otherwise intend that initial habeas petitions be rigidly fixed as initially filed, such that any amendment must be treated as a separate, stand alone collateral attack. The only understanding of the background legal rules that makes sense of § 2266(b)(3)(B)'s inducement to opting-in states in capital cases is that amendments are otherwise permissible in habeas proceedings as long as they have a proper relation to the *initial* habeas application. That understanding is precisely consistent with § 2242's allowance of amendments and its adoption of the Federal Rules of Civil Procedure—including Rule 15(c)'s relation-back doctrine—to regulate their operation. *See Ellzey*, 324 F.3d at 526 ("An amendment that is not treated as a new challenge when counting multiple collateral attacks also is not a new challenge that must independently satisfy the statute of limitations."); *see also Littlejohn* v. *Artuz*, 271 F.3d 360, 363 (2d Cir. 2001) ("Given that motions to amend are not successive petitions, the standard for granting or denying a motion to amend is thus governed by Federal Rule of Civil Procedure 15(a)."). [5] Because Congress did not alter the habeas statue's pre-existing amendment rules outside of opt-in capital cases, AEDPA should not be construed to have undertaken any such alteration *sub silentio*. *Accord Lindh* v. *Murphy*, 521 U.S. 320, 329 (1997) ("Nothing, indeed, but a different intent explains the different treatment. Congress was explicit about Chapter 154 applying and could have been so about Ch. 153"); *id.* at 337-338 (Rehnquist, J., dissenting) (noting that the Court "relie[d] on . . . *expressio unius est exclusio alterius* [for] the negative inference that can be drawn from the fact that Congress expressly made chapter 154, pertaining to capital cases, applicable to pending cases, but did not make the same express provision in regards to chapter 153.").

[5] This understanding is reinforced by the absence of any reference in AEDPA's legislative history or the influential Powell Commission indicating a concern with relation-back rules.

III. Applying Federal Rule Of Civil Procedure 15(c) In Accordance With This Court's Precedent To Habeas Applications Creates No Inconsistency With The Habeas Framework Generally Or With AEDPA In Particular

Section 2242's clear command makes resort to general policy considerations unnecessary for the present inquiry. Even if the Court were to consider such policies, however, relation back when the amended application attacks the same judgment as the original application creates no inconsistency with the habeas framework generally or with AEDPA in particular.

A. Consistency With The General Habeas Framework

Since our nation's inception, the "Great Writ" has served both societal and prisoners' interests by providing "a bulwark against convictions that violate fundamental fairness." *Engle* v. *Isaac*, 456 U.S. 107, 126 (1982) (internal quotation marks and citation omitted); *see also McCleskey* v. *Zant*, 499 U.S. 467, 496 (1991) ("The writ of habeas corpus is one of the centerpieces of our liberties."); *Brown* v. *Allen*, 344 U.S. 443, 512 (1953) (describing the availability of the writ as "one of the decisively differentiating factors between our democracy and totalitarian governments"). In accordance with this critical function, Congress in 1867 made the writ available in "all cases where any person may be restrained of his or his liberty in violation of the constitution, or of any treaty or law of the United States." Act of Feb. 5, 1867, ch. 28, 14 Stat. 385, 385. Thereafter, Congress and the courts expanded the writ into "a general means by which federal courts could inquire into the validity of state court judgments." Larry W. Yackle, *Federal Courts: Habeas Corpus* 35 (2003); *see also* 28 U.S.C. § 2254; *Waley* v. *Johnston*, 316 U.S. 101 (1942).

Though habeas practice has not adopted notice pleading, *see* Habeas Rule 2, this Court has long recognized that because of the fundamental importance of the writ, habeas corpus is "not a static, narrow, formalistic remedy, but one which must retain the ability to cut through barriers of form

and procedural mazes." *Hensley* v. *Municipal Court*, 411 U.S. 345, 349 (1973); *Holiday* v. *Johnston*, 313 U.S. 342, 350 (1941) ("A petition for habeas corpus ought not to be scrutinized with technical nicety. Even if it is insufficient in substance it may be amended in the interest of justice.").[6]

Even when this Court has enforced strict procedural requirements to accord state criminal judgments respect in our federalist system and to curtail abuses of the writ, it has balanced such concerns against the need to protect the integrity of the writ in affording prisoners an effective and comprehensive opportunity to obtain review of their federal claims. *See, e.g., Lonchar* v. *Thomas*, 517 U.S. 314, 330 (1996) (rejecting the dismissal of petitions for ad hoc "equitable" reasons because "the interest in permitting federal habeas review of a first petition is quite strong"); *McFarland* v. *Scott*, 512 U.S. 849, 856 (1994) (holding that capital prisoners may obtain counsel prior to filing their initial habeas applications because "[r]equiring an indigent capital petitioner to proceed without counsel to obtain counsel would expose him to substantial risk that his habeas claims never would be heard on the merits"); *Rose* v. *Lundy*, 455 U.S. 509, 520 (1982) (praising exhaustion requirements because they "reduce[] piecemeal litigation" and increase the likelihood that "district court[s] will review all of the prisoner's claims in a single proceeding, thus providing for a more focused and thorough review"). The balanced consid-

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[6] Indeed, although Habeas Rule 2(e) used to provide that the clerk of the court could refuse to accept a prisoner's filing where a district court judge authorized that the application be returned for failure to meet Habeas Rule 2 or 3 requirements, that provision was recently deleted in an effort to ensure that technical defects did not prevent prisoners from obtaining a review on the merits of their claims. *See* Habeas Rule 2 (as amended Dec. 1, 2004). The 2004 Advisory Committee Notes explain that the return rule had imposed no penalty on prisoners other than delay prior to the enactment of AEDPA's statute of limitations, but that in light of the new time limit, "the better procedure [is] to accept the defective petition and require the petitioner to submit a corrected petition that conforms to Rule 2(c)."

erations reflected in those decisions—promotion of decisions on the merits rather than on technicalities and discouragement of piecemeal litigation by promoting a first, full hearing of all petitioners' federal claims—continue to carry significant weight in post-AEDPA habeas practice. *See, e.g., Slack* v. *McDaniel*, 529 U.S. 473 (2000).

B. Consistency Of Rule 15(c) With AEDPA

AEDPA imposed a specific statute of limitations on habeas cases for the first time in the history of the writ and made various other significant changes to habeas corpus practice to streamline the decision-making process and promote the finality of state criminal law decisions. However, AEDPA's structure and legislative history demonstrate that the statute's focus was not finality to the exclusion of other congressional objectives. Rather, AEDPA reflected a balancing of competing objectives—in particular, ensuring access to a single, comprehensive round of federal review—that are consistent with, and facilitated by, Rule 15(c)'s relation-back rule.

1. AEDPA's statute of limitations

Petitioner and its *amici*'s central argument is that AEDPA's inclusion in 28 U.S.C. § 2244(d) of a one-year statute of limitations shows that Congress implicitly proscribed the normal operation of Rule 15(c) relation-back rules to habeas applications. A careful analysis of the history of statute of limitations in the habeas context, along with an examination of § 2244(d)'s text and purpose demonstrate that Congress did not intend to alter application of Rule 15(c) to habeas pleading amendments.

As a preliminary matter, it is important to note that nearly all civil causes of action are subjected to statutes of limitation to encourage the "reasonably diligent presentation" of claims, *United States* v. *Kubrick*, 444 U.S. 111, 123 (1979), by demarcating the legislature's judgment of the "point at which the delay of a plaintiff in asserting a claim is sufficiently likely either to impair the accuracy of the fact-finding process or to upset settled expectations that a substantive claim will be barred without respect to which it is meritorious." *Board of Regents* v. *Tomanio*, 446 U.S. 478, 487 (1980). Despite the beneficial functions of such time limits, legislatures frequently include statutory tolling provisions to avoid unnecessarily harsh application of limitations periods, and courts have developed additional doctrines to permit otherwise untimely claims to proceed when the opposing party has received fair notice of the dispute (as with the relation-back and waiver doctrines) or when the claimant can otherwise show good cause for delay (equitable tolling). *See, e.g., Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89 (1990) (holding that Title VII's statutory time limits are subject to equitable tolling against the United States).

In contrast to other types of civil complaints, however, habeas petitions were not historically subject to a specific time limit prior to AEDPA. Instead, Habeas Rule 9(a) merely imposed a laches-like standard that authorized, but did not require, dismissal of an unreasonably delayed claim if there was an additional showing that "the government has been prejudiced in its ability to respond to the petition by delay in its filing." Habeas Rule 9(a) (eff. 1977 to Dec. 1, 2004); *see also* § 2255 Rule 9(a) (eff. 1977 to Dec. 1, 2004).[7] AEDPA thus conformed habeas petitions to general civil practice by imposing a specific time limit on the filing of initial court actions. The relation-back rule of 15(c) is entirely compatible with statutes of limitation; indeed, its entire function is to harmonize, through its fair notice requirement, the goal of finality embodied in the statute of limitation with the objective of facilitating a full and fair merits adjudication of all claims attacking the same judgment and thus arising

[7] Prior to the implementation of Habeas Rule 9(a) in 1977, neither a statute of limitations nor laches principles were applied to habeas applications. Significantly, Congress struck language from the Rule that had been approved by the Supreme Court to create a rebuttible presumption of prejudice to the government if an application was filed more than five years after conviction. *See generally* 3 Charles Alan Wright et al., *Federal Practice and Procedure* § 597 (3d ed. 2004); 2 Hertz & Liebman, *supra* note 2, at ch. 24.

from the same "conduct, transaction, or occurrence." Fed. R. Civ. P. 15(c)(2).

Several features in the text of AEDPA's statute of limitations demonstrate that, as with its civil statute of limitation counterparts, § 2244(d)'s purpose was to promote multiple goals, including not just finality, but other policies such as comprehensive adjudication and equity. First, the statute does not simply provide that the limitations period shall run from the date on which the relevant state judgment becomes final, but provides three additional trigger dates for later-accruing challenges, and instructs that "[t]he limitation period shall run from the latest of the four" relevant possible dates. 28 U.S.C. § 2244(d)(1)(A)-(D).

Second, AEDPA provides that the clock shall be tolled while "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." 28 U.S.C. § 2244(d)(2). The provision "provides a powerful incentive for litigants to exhaust all available state remedies before proceeding in the lower federal courts," *Duncan* v. *Walker*, 533 U.S. 167, 180 (2001), thus minimizing the risk that federal review will even be required and helping to ensure that petitioners' applications can be promptly adjudicated if and when they are filed in federal court. *Cf. Rose*, 455 U.S. at 510 (requiring the dismissal of "mixed petitions" containing both exhausted and unexhausted claims to permit the petitioner to return to state court).

Third, Congress provided that the "1-year period of limitation shall apply to an *application* for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court," not to each individual *claim*. 28 U.S.C. § 2244(d)(1) (emphasis added); *cf. Artuz* v. *Bennett*, 531 U.S. 4, 9-10 (2000) (unanimously holding that the "only permissible interpretation" of § 2244(d)(2)'s tolling provision was to construe "application for State post-conviction or other collateral review" as referring to a petitioner's state filing as a whole, not to each claim individually).[8] A habeas

whole, not to each claim individually).[8] A habeas application is a request for relief from an allegedly unconstitutional or unlawful confinement imposed under a particular state court judgment. *See, e.g.*, 28 U.S.C. § 2254(a) ("[A]n application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court [shall be entertained] only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."). The statute of limitation's focus on the timeliness of the initial "application" thus parallels—and is entirely consistent with—Rule 15(c)'s focus not on each individual claim but on the underlying "transaction," namely, the state court judgment of conviction or sentence that has resulted in the challenged confinement and ultimately animates every claim in the habeas petitioner's application.

Such an approach makes sense, given that the filing of an initial timely application places the State on full notice that the validity of its underlying judgment is under challenge. Regardless of how many claims an application contains, the simple fact that it has been filed serves to extend the overall litigation and raise questions about the validity of the sentence under execution. Despite these effects, how-

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[8] Construing the statute of limitations as applying to a petitioner's application as a whole based on the latest relevant trigger date is consistent with congressional intent, since it encourages petitioners to bring a single comprehensive application rather than filing separately each time a claim accrues. *See* 1 Hertz & Liebman, *supra* note 2, § 5.2b at 226-227 & n.70 ("Given Congress' objective of streamlining the habeas corpus process, it seems highly unlikely that Congress . . . opted for a claim-by-claim approach that could require piecemeal habeas corpus litigation on a scale never before imagined."); *see also Rose*, 455 U.S. at 520 (advocating the reduction of piecemeal litigation because single, comprehensive proceedings "provid[e] for a more focused and thorough review"). Such an interpretation is consistent with the distinction made between "applications" for habeas corpus and individual "claims" in other parts of the habeas statutes. *See, e.g., United States* v. *Winestock*, 340 F.3d 200 (4th Cir. 2003) (distinguishing between "claim" and "application" in 28 U.S.C. § 2244(b)(3)); *Nevius* v. *McDaniel*, 104 F.3d 1120 (9th Cir. 1997) (same); *see also Moore* v. *Schoeman*, 288 F.3d 1231 (10th Cir. 2002) (discussing the significance of "application" in 28 U.S.C. § 2254(b)(1)(A)).

ever, Congress nonetheless chose to preserve prisoners' initial access to the writ and to make their first review comprehensive, while sharply curtailing opportunities for filing successive or second petitions. *Accord, e.g.*, 142 Cong. Rec. H2259 (daily ed. Mar. 14, 1996) (remarks of Rep. McCollum) ("[W]e are going to provide for limited opportunity to go into Federal court after you have exhausted all of your regular appeals ... and provide in one bite at the apple[—t]he chance to raise all your procedural concerns over the case"); *id.* at S7657 (daily ed. June 5, 1995) (remarks of Sen. Dole); *id.* at H2143 (daily ed. Mar. 13, 1996) (remarks of Rep. McCollum); *id.* at H2184 (daily ed. Mar. 13, 1996) (remarks of Rep. Hyde).

Thus, the language, structure, and legislative history of AEDPA's statute of limitations demonstrate that Congress intended to bring habeas practice in line with the rules governing other civil actions by ensuring petitioners submit initial filings promptly so that states may have fair notice that the legality—and thus finality—of the underlying criminal judgment is in doubt. Applying the relation-back doctrine in accordance with *Tiller* provides an internally consistent and clear rule that furthers congressional intent by permitting petitioners a single opportunity to obtain comprehensive adjudication of all claims relating to the same "transaction" (judgment of sentence or conviction) challenged by the initial pleading.

2. AEDPA's changes to other procedures

AEDPA also altered a number of other existing procedural rules that Congress concluded were inadequate to ensure the timely resolution of claims. For example, the statute authorized district courts to dismiss unexhausted, meritless claims where the State expressly waives its exhaustion objection. 28 U.S.C. § 2254(b)(2)-(3). Further, it altered the procedure for filing successive habeas petitions to require that petitioners obtain circuit court approval and to bar rehearings or Supreme Court certiorari review of approval determinations. *See id.* § 2244(b)(3). In addition, it replaced Federal Rule of Appellate Procedure 22(b)'s procedure for

appealing adverse district court rulings to require petitioners to obtain certificates of appealability before proceeding. *See id.* § 2553(b). It also increased procedural requirements for obtaining leave to hire and for compensating court-funded investigators, expert witnesses, and other providers of support services, as well as capping fees for appointed counsel. *See* 21 U.S.C. § 848(q).

AEDPA's explicit alteration of all these procedural rules—enacting a new standard for amendment of petitions in opt-in states, imposing a statute of limitations, and tightening general habeas procedures—undercuts any argument that Congress implicitly altered amendment and relation-back principles with regard to non-capital prisoners and capital prisoners in states that decline to comply with Chapter 154 requirements. *Accord Morton* v. *Mancari*, 417 U.S. 535, 550 (1974) (construing an act of Congress to effect an implicit repeal is "disfavored unless there is "some affirmative showing of [congressional] intention"). As this Court has recognized, habeas rules and practices that were not altered by AEDPA remain intact. *See, e.g.*, *Felker* v. *Turpin*, 518 U.S. 651, 660 (1996) ("[W]e conclude that Title I of the Act has not repealed our authority to entertain original habeas petitions.").

IV. Applying Federal Rule Of Civil Procedure 15(c) Will Preserve Meritorious Claims Without Meaningfully Impacting The States' Notice Or Finality Interests

Petitioner and its *amici* assert that applying Rule 15(c) in accordance with this Court's precedents will create opportunities for abuse of the writ, as prisoners wait until the last possible moment to add additional claims that delay resolution of their cases by the courts. As detailed below, this theoretical "gaming" argument is foreclosed by two important realities of the current federal habeas system.

A. The States' Notice And Finality Interests Are Protected By At Least Three Other Systemic Safeguards, Important Elements Of Which Were Strengthened By AEDPA

Concerns about abusive amendments are largely confined to capital cases, because prisoners who are not under capital sentences have little or no motivation to drag out their cases by deliberately failing to raise meritorious claims when doing so would only postpone their prospects of relief. Furthermore, important protections available under Federal Rule of Civil Procedure 15(a) and caselaw concerning the propriety of amendments after a final court decision provide significant protections against abusive amendments. These protections have been further strengthened by enactments in AEDPA, including its special limitations in capital cases, which provide muscular protection against abuse of the writ without any need to read AEDPA as repealing § 2242's amendment provisions *sub silentio*.

1. District courts are empowered to reject inadequate petitions

States' notice and finality interests are protected in habeas proceedings by Federal Rule of Civil Procedure 15(a), which empowers district courts to play a gate-keeping function and reject inadequate petitions. Rule 15(a) authorizes courts to reject amendments to a state prisoner's habeas petition in a number of instances. First, it permits one amendment as a matter of course only until a responsive pleading is filed. Fed. R. Civ. P. 15(a). Thus, a State can simply file an answer, as the Warden did in the instant case after the amended petition was filed, to restrict the petitioner's subsequent amendment rights. Indeed, several circuit courts have rules requiring states to file answers unless a petition manifestly cannot be construed or revised to state a tenable claim for relief, and many states have adopted a practice of routinely answering petitions upon service, particularly in capital cases. 1 Hertz & Liebman, *supra* note 2, § 16.1, at 717.

Once an answer has been filed, Rule 15(a) requires petitioners to seek leave of court before amending their applications. Though Rule 15(a) provides that "leave shall be freely granted when justice so requires," this Court has long recognized that district courts have discretion to reject amendments due to bad faith or undue delay. *See, e.g.*, *Foman* v. *Davis*, 371 U.S. 178, 182 (1962) (denial of leave to amend under Rule 15(a) is proper where court finds "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc."); *Grace* v. *Rosenstock*, 228 F.3d 40 (2d Cir. 2000) (collecting cases and discussing district courts' discretion under Rule 15 (a)). In the habeas context, this discretion allows the denial of amendments that would be futile or, for reasons specific to the case, would frustrate the goals of AEDPA. *Ellzey*, 324 F.3d at 526; *Felix* v. *Mayle*, 379 F.3d 612, 616 & n.3 (9th Cir. 2004). The district court's power to police abuses provides more than sufficient incentive for prisoners petitioning for habeas relief to include all known, available claims and thereafter forego abusive amendments.

2. A final decision normally cuts off further amendments

Lower courts commonly apply Rule 15 to reject attempts to amend pleadings after a decision has been rendered. *See, e.g.*, *Ellzey*, 324 F.3d at 527 ("[R]ejection of a post-decision amendment almost never can be an abuse of discretion."); *Jones* v. *United States*, 304 F.3d 1035, 1043 & n.16 (11th Cir. 2002) (rejecting a relation-back argument concerning a § 2255 motion where the original motion had already been decided by the district and appellate courts); *Warren* v. *Garvin*, 219 F.3d 111, 114 (2d Cir. 2000) ("[T]he 'relation-back' doctrine is inapplicable when the initial habeas petition was dismissed, because there is no pleading to which to relate back."). As a result, district courts' ability to decide the underlying claims at any time further limits habeas petitioners' ability to amend their applications under

Rule 15(c) and increases their motivation to bring amendments as early as possible.

This motivation is particularly strong in light of AEDPA's strict limitations on prisoners' bringing successive or second petitions after their initial applications have been resolved. *See* 28 U.S.C. § 2244(b)(2) (prohibiting petitioners from bringing claims not raised in their prior applications unless those claims involve a narrow class of new rules of constitutional law made retroactive or involve a specified, quite narrow class of previously undiscovered facts). Any delay in asserting meritorious claims has become extremely risky because a decision by the district court will likely cut off any opportunity to seek review on the merits.

3. Congress specifically strengthened the two prior protections with regard to the only petitioners who have some motivation to drag out their litigation

Furthermore, it is significant that AEDPA *specifically* strengthened the protections provided by Rule 15 and dismissals in connection with capital prisoners—the only group of petitioners who have incentive to delay the resolution of their applications for relief pursuant to a writ of habeas corpus. Under the opt-in program specified in Chapter 154 of AEDPA, Congress provided both that petitioners may not amend their applications after a responsive pleading has been filed unless the new claim meets the narrow criteria for a successive petition, and required that district courts render a decision within 210 days after an application is filed. *See* 28 U.S.C. § 2266(b)(1), (b)(3)(B). As discussed *supra*, Congress's considered choice to enact stronger procedural rules to curtail amendments by certain capital petitioners implies a measured judgment by Congress that existing controls were otherwise adequate. To the extent that States experience ongoing abuse of the writ, AEDPA offers them the incentive and opportunity to conform their systems to opt in to the stronger protections afforded by Chapter 154. *Cf. Carey*, 536 U.S. at 223 ("[I]t is the State's interests that the tolling provision seeks to protect, and the State, through its supreme court decisions or legislation, can explicate timing requirements more precisely should that prove necessary.").

B. Rule 15(c)'s Relation-Back Rule Is Critical For Preserving Meritorious Claims, Particularly In Light Of The Structure Of The Attorney-Appointment Process In Federal Habeas

Limiting Rule 15(c)'s application in cases such as this is not only unnecessary for the reasons just summarized, but would also seriously affect those *pro se* prisoners who have vigilantly attempted to pursue their rights but may lack the knowledge of the facts and law needed to recognize and plead meritorious claims. The vast majority of habeas petitioners are unrepresented by counsel. *See Federal Habeas Corpus Review*, *supra*, at 14 ("In 93% of the sampled habeas corpus cases, the prisoner was without legal counsel (pro se)."). Most petitioners thus have no choice but to proceed as best they can. *See* 1 Hertz & Liebman, *supra* note 2, § 3.5b at 194-95; *id.* § 12.3. If *pro se* petitioners obtain counsel at all, the appointments do not occur unless and until a magistrate judge reviews the original application and determines that the application raises a claim or claims with sufficient merit to warrant appointment of an attorney. Thus, newly appointed counsel, in such situations of a potentially meritorious claim, often lack sufficient time before the expiration of AEDPA's one-year statute of limitations to analyze and amend the original application.

An unduly cramped construction of Rule 15(c) in such circumstances would threaten to bar a significant class of meritorious claims from reaching the courts for review. *Accord, e.g.*, *Wilwordin* v. *Swenson*, 502 F.2d 844, 847 n.4 (8th Cir. 1974) (courts "welcome" amendments clarifying *pro se* habeas petitions; amendments are preferred because they avoid successive petitions and indicate whether a hearing is necessary). As this Court has already recognized in holding that capital petitioners may apply for the appointment of counsel prior to filing their initial habeas petitions, assistance with framing an initial application is critical to ensur-

ing that "the first petition adequately set[s] forth all of a state prisoner's colorable grounds for relief." *McFarland* v. *Scott*, 512 U.S. 849, 860 (1994) (O'Connor, J., concurring in the judgment in relevant part), and avoiding "substantial risk that [petitioners'] habeas claims never would be heard on the merits." *Id.* at 856 (majority opinion). Ensuring that amendments will relate back to the initial application is critical for *pro se* petitioners to receive the benefits of representation in cases in which courts determine that attorney appointment is warranted.

In short, in addition to reflecting the plain language and policies of 28 U.S.C. §§ 2242 and 2244(d), the ordinary application of relation-back rules to habeas applications will preserve meritorious claims without meaningfully impacting the States' notice or finality interests.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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